IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.206 OF 2005

Yogesh Mehta, Sole Proprietor of
M/s.M.D. Construction Co. .. Petitioner
v/s.
1. M/s.Catherine Quinny Trust &
ors. .. .. Respondents

Mr.P.K.Dhakephalkar with Mr.Y.M.Chaudhary i/by Mr.I.A.Bagaria for petitioner.

Mr.Clive D'Souza for res.Nos.1 to 6.

Mr.N.H.Seervai, Sr.Advocate with Ms.Sampada Mahadik for res.No.7.

Mr.Jokim Reis with Mr.R.N.Kachare for res.No.9.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATED : 9TH FEBRUARY 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. This petition seeks to challenge the order passed by the Charity Commissioner under Section 36(1)(a) of the Bombay Public Trusts Act, 1950 on 13th December 2004, whereby the Charity Commissioner has allowed the application filed by the trustees of the 1st respondent-Trust seeking permission to sell the property bearing final plot

No.1260 situated at old Prabhadevi Road, Prabhadevi, Mumbai. This plot is of an area of 5220.77 sq. meters. As seen from the order of the Charity Commissioner, the plot has some encroachments and there is also reservation for a school. It is also to be noted that part of the plot will be in the CRZ area. The notices to sell this property have been given in March 2002 wherein the reserved price was fixed at Rs.11 Crores and it so happened that no bids were received in terms of these notices. Ultimately, an offer was made on 24th July 2003 from respondent No.7 for Rs.7.86 Crores. Subsequently the offer was revised to Rs.8.15 Crores on 23rd December 2003.

3. During the course of the proceedings before the Charity Commissioner, the petitioner claims to have offered Rs.8.50 Crores on 29th November 2004 and respondent No.7 revised its offer to Rs.8.50 Crores. It so happened that the petitioner was asked by the Charity Commissioner specifically as to whether he was prepared to make any down payment. He answered in the negative. It is relevant to note that in the public notice published in the newspapers there was a specific

condition that the offerer has to submit his offer along with Demand Draft or Pay Order of Rs.15 Lakhs. It is in these circumstances that the Charity Commissioner has granted the application filed by respondent Nos.1 to 6. Respondent No.7 has already made the payment of Rs.11 Lakhs when the Memorandum of Understanding was arrived at. It was to pay Rs.2.5 Crores by today which were not paid due to this litigation but will be paid within two days and the remaining amount within one week. As against that, respondent No.7 has filed an affidavit in reply and contended that the petition is nothing but a blackmailing tactic. Mr.Seervai appearing for respondent No.7 offered to produce evidence in that behalf.

4. The only point canvassed by Mr.Dhakephalkar, learned Counsel appearing for the petitioner, is that the petitioner was ready to offer a better amount. He has brought a Demand Draft of Rs.25 Lakhs with him. In this behalf, Mr.Dhakephalkar has relied upon two judgments of the apex Court firstly in the case of **Mahesh Chandra vs. Regional Manager, U.P. Financial Corporation & others reported in (1993) 2 SCC 279 (Para-17)** and secondly in the case of **Ambalal**

Manibhai Patel vs. State of Gujarat reported in 1989 Supp (2) SCC 362 (Para-13). Both these judgments are to the effect that whatever is in the interest of the Trust has to be zealously protected. He has further relied upon a judgment of the apex Court in the case of **Mehrvan Homi Irani & another vs. Charity Commissioner, Bombay & others reported in 2001 (4) Bom.C.R. 17** where the Court has noted that the efforts to explore the better terms can always be made. In the facts and circumstances of the case, we find that the Charity Commissioner has done that exercise and has arrived at a conclusion which cannot be said to be perverse in any manner whatsoever. He has also given reasons as to why he was not accepting the petitioner's offer and found respondent No.7's offer to be a better offer. There can always be a marginal difference in all such matters with respect to the better offer. In the present case, for that reason also the Charity Commissioner could not have entertained the objections raised by the petitioner. We find that he has exercised his discretion properly.

5. In the circumstances, we do not find any merit in the petition. The petition is dismissed.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)